

**FILED**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

APR 8 2013

LINDSEY KENT SPRINGER,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

**Phil Lombardi, Clerk  
U.S. DISTRICT COURT**Civil Case No. 13-CV-145  
(09-CR-043-SPF)

## MOTION TO CLARIFY SPECIFICALLY

Lindsey Kent Springer ("Petitioner") moves this Court to specifically clarify (1) what is the case number Federal Law requires Petitioner use at this point of the proceedings; (2) how Petitioner's case is, after the initial filing of his Motion, Memorandum, and Declaration, "a continuation of the criminal case"; (3) why it would not be necessary for Petitioner to file the application form to proceed without pre-payment of "fees and costs" no matter what the form the future expense is styled; (4) what docket # 479 is and directing Petitioner be served with same without having to pay the costs associated with that filing.

## BACKGROUND

On March 11, 2013, "[a] the direction of Stephen P. Friot, U.S. District Judge" an order was docketed in 09-CR-043 directing the United States of America be served with Petitioner's Motion filed under § 2255. Doc. 476

This Court stated "[T]his notification is made pursuant to the Rules of the United States Supreme Court and this Court." Id.

The Court's order identifies two case numbers. The first is 09-CR-043 and the new civil case number is 13-CV-145-SPF-TLW." Id.

On March 15, 2013, an order was entered in 09-CR-043 directing the United States America address grounds that "need not, and should not, address in these..proceedings."

On March 27, 2013, an order was also entered in 09-CR-043 striking Petitioner's application to proceed without paying fees or costs with respect to his motion for

(1)

☒ Mail ☐ No Cert Svc ☐ No Orig Sign  
☐ C/J ☐ C/MJ ☐ C/Ret'd ☐ No Env  
☐ No Cyps ☒ No Env/Cyps ☐ O/J ☐ O/MJ

relief under 28 U.S.C. § 2255. Doc. 480.

#### SPECIFIC CLARIFICATION SOUGHT

First, the Court has Petitioner confused as to which case number is to be used when filing any documents regarding Petitioner's Motion, Memorandum, and Declaration. See Doc. 472 through 475.

The Court has used either both a civil and criminal case number and then has also used just the criminal case number assigned originally by the Court Clerk on March 10, 2009. See Doc. 1,2.

Second, the Court's statement "[A] § 2255 is a continuation of the criminal case whose judgment is under attack..."

Why is a civil case number assigned by the Clerk's Office if the criminal case continues unchanged by the filing of the Motion pursuant to 28 U.S.C. § 2255?

Petitioner understands that the motion itself had to be filed to trigger the district court's jurisdiction but that single event does not then follow to the Court's conclusion that the criminal case is continuing after that filing.

"When a motion is filed under 28 U.S.C. § 2255 ("a § 2255 motion"), the motion effectively begins a civil proceeding under a new case record and all pleadings and documents are filed under a new civil case number." U.S. v Huff, 2012 U.S. Dist. Lexis, 23311(n.1). See also U.S. v. Krehbrel, 2008 U.S. Dist. Lexis, 17922(W.D.Ok.) (Honorable U.S. Dist. Judge Timothy D. Dequisti)("according to the procedure followed in this Court, a civil case is opened when a convicted defendant files a § 2255 motion.")

Third, the Form application Petitioner filed with the Court was the form sent to Petitioner in the package involving the § 2255 Form Motion.

In this Court's order it stated Petitioner "filed an application to proceed without prepayment of fees." Doc. 480

Doc. 479 actually reads:

"that in support of my request without prepayment of fees or costs under 28

USC § 1915..."

The application is not limited to just "filing fees" which technically the application form does not state. It does state "fees and costs" but also explains:

"I declare that I am unable to pay the costs of these proceedings..."

Id.

Petitioner agrees this Court has already found him in forma pauperis in 09-CR-043 for specific events but at no time has any Court ordered Petitioner authorized to obtain certain events without paying the costs, including costs of copies of certain documents this Court directed the United States of America to specifically list "(with supporting record citations) those grounds for relief, if any." Doc. 478, pg.2

Rule 5 of the Section 2255 proceedings direct under subsection (c) that:

"If the answer refers to briefs or transcripts of the prior proceedings that are not available in the Court's record, the Judge must order the government to furnish them within a reasonable time that will not unduly delay the proceedings."

By the Court's order, Doc. 478, Rule 5 is not even applicable both as to the "prior proceedings" and "not available in the Court's record" (new civil case) because the phrase "continuation of the criminal case" which just makes no sense to Petitioner.

And Fourth it appears Petitioner is being prejudiced by the bifurcated procedure and bifurcated civil/ criminal case numbers as somewhere is a "Document 479" that Petitioner has not seen or been served with.

Petitioner thus needs to ask the Court Clerk to provide Docket # 479 and without this Court granting his Application to Proceed without having to pay costs Petitioner will need to pay for Docket # 479. Certainly, it would appear the "continuation of the criminal case" language used by Rule 3 is limited to the point when the Motion is filed under 28 U.S.C. § 2255, and as the Supreme Court held:

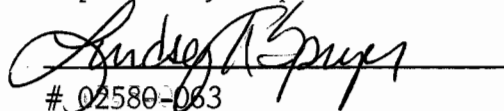
"habeas corpuse cuts through all forms and goes to the very tissue of the structure. It comes in form the outside, not in subordination to the proceedings ..."

See Wade v. Mayo, 334 U.S. 672, 690(1948).

CONCLUSION

Petitioner specifically requests this Court specifically clarify (1) what is the case number Federal Law requires Petitioner use at this point of the § 2255 proceeding; (2) how Petitioner's case is, after the initial filing of his Motion, Memorandum, and Declaration, "a continuation of the criminal case"; (3) why it would not be necessary for Petitioner to file the application form to proceed without prepayment of "fees and costs" no matter what the form the expense is proffered by; (4) what docket # 479 is and directing Petitioner be served with same without having to pay the costs associated with that filing.

Respectfully Requested

  
# 02580-063

Federal Correctional Institution  
1900 Simler Ave  
Big Spring, Texas 79720

CERTIFICATE OF SERVICE

I hereby certify that I mailed Petitioner's Motion to Clarify Specifically to the Clerk of Court, 333 West Fourth Street, Tulsa Oklahoma 74103:

I further certify that all parties shall receive service of Petitioner's motion identified above through the Court's ECF system:

UNITED STATES OF AMERICA

April 3, 2013  
dated

  
Server

DECLARATION OF MAILING

I declare under the penalty of perjury that on April 3, 2013, I deposited the above identified Motion to Clarify Specifically in the U.S. Mail, First Class, located inside FCI Big Spring Federal Prison located within the external boundaris of the City of Big Spring, and State of Texas.

April 3, 2013  
dated

  
Declarant



Lindsey East Spry  
# 02580-063  
Federal Correctional Institution  
1900 Simlar Ave  
Big Spring, Texas 79720

**RECEIVED**

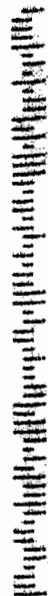
APR 8 2013

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

Clerk of Court  
U.S. District Court - Northern District  
333 West Fourth St  
Tulsa, Oklahoma 74103

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